

Interest to Remedy the Effects of Discrimination in Federal Contracting: A Survey of Recent Evidence.” The DOJ summary and associated report illustrate how systemic discrimination continues to create barriers for women- and minority-owned businesses to fairly compete for federal contracts and how federal contracting programs can respond to, address, and remedy the harmful effects of discrimination.

[From the U.S. Department of Justice, May 16, 2022]

THE COMPELLING INTEREST TO REMEDY THE EFFECTS OF DISCRIMINATION IN FEDERAL CONTRACTING: A SURVEY OF RECENT EVIDENCE—EXECUTIVE SUMMARY

On January 27, 2022, the Department of Justice posted a notice in the Federal Register announcing the publication of a Department of Justice report surveying the evidence supporting the use of race- and sex-conscious contracting programs by the federal government in order to remedy the effects of discrimination.

This report is third in a series created by the Department of Justice since the Supreme Court determined that federal race-conscious contracting programs must meet the strict scrutiny standard of review to survive a constitutional challenge based on the Equal Protection Clause in *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995). Each report has compiled and summarized the evidence of discriminatory barriers that businesses owned by women and people of color face that impede participation in government contracting. Both previous reports have been cited in federal court as evidence that there is a compelling governmental interest in programs that support the ability of businesses owned by people of color to compete on an equal basis. Strict scrutiny is the most exacting standard of review, and it requires, among other things, evidence supporting the conclusion that such measures are necessary to further the compelling governmental interest in remedying the effects of past and present racial discrimination. If a program contains affirmative measures based on sex, those measures are subject to the somewhat lower standard of intermediate scrutiny. That standard demands that any gender-based preference be substantially related to an important governmental objective.

In assessing whether race- and sex-conscious government contracting programs could continue to survive heightened levels of judicial review, the Department of Justice reviewed hundreds of state and local disparity studies, dozens of congressional hearings and related testimony, government reports on public contracting, academic and expert reports on public and federal contracting, academic and government reports on financial data related to small businesses, and recent case law related to Equal Protection challenges to government contracting and grant programs. The disparity studies, congressional hearings, and academic reports contain both quantitative and qualitative evidence of the persistence of discrimination and its lingering effects in the public and private sector.

The Department of Justice report determines that there is a strong basis in evidence, both quantitative and qualitative, of the continued pervasiveness of discriminatory barriers that impede the full and fair participation of businesses owned by women or people of color in government contracting. The evidence discussed in this report supports the compelling interest in the continued use of federal programs that contain remedial measures to eliminate discriminatory barriers to contracting opportu-

nities for businesses owned by minorities and an important state interest in the continued use of federal programs that contain remedial measures to eliminate discriminatory barriers to contracting opportunities for businesses owned for women.

Both the qualitative and quantitative evidence shows the various ways discrimination hinders the ability of minority- and women-owned businesses to compete equitably for government contracts. While this discrimination can take many forms, primary obstacles include: (1) discrimination limiting access to capital; (2) discrimination by procurement agencies and prime contractors, (3) exclusion from business networks, and (4) discrimination in lending and by bonding companies and suppliers.

In assessing the current public contracting environment faced by minority- and women-owned businesses, the Department of Justice reviewed over 200 disparity studies from state and local jurisdictions in 34 different states and the District of Columbia. Disparity studies are quantitative demographic analysis of public procurement contracting utilization as compared to local business availability categorized by the race or sex of the owner. The review of these studies shows that there continues to be substantial disparities between the availability of minority- and women-owned businesses and the utilization of such businesses in state and local government procurement in all areas of the country and at all levels of procurement. The overwhelming majority of these studies showed significant under-utilization of minority- and women-owned businesses in almost every sector of public procurement. The report cited to an overview of these disparity studies conducted by the Minority Business Development Agency in 2016, which found that the studies indicated significant contracting disparities for minority business enterprises that were pervasive across different ethnic and racial groups, industries, and geographies. Shockingly, the median value for the observed disparities was just 19%, indicating that minority businesses were being utilized at less than one-fifth of their availability in a given marketplace.

The report also reviewed federal government small business contracting. In 2017, just 9.8% of federal spending on contracts went to minority-owned businesses. The same year, woman-owned businesses received only 5% of federal prime contract awards. Even when comparing businesses and controlling for the industry in which the firm did business, business age, business size (both in terms of average number of employees and annual receipts), business form, and security clearance, the likelihood of minority-owned businesses receiving a federal contract versus similar businesses is still lower than non-minority-owned businesses.

Overwhelmingly, the disparity studies and reports also present evidence linking disparities in contracting to discriminatory factors. In the private financial sector, historic barriers and private discrimination has limited the ability of minority business owners to accumulate assets and wealth. Minority-owned businesses are two to three times more likely to be denied credit, more likely to avoid applying for loans based on the belief they will be turned down, and more likely to receive smaller loans and pay higher interest rates on the loans they do receive. Minority- and women-owned firms not only receive smaller loans at higher interest rates than firms owned by White males, but they also get smaller equity investments.

In the bonding arena, both quantitative and qualitative evidence shows that bonding requirements disproportionately affect businesses owned by women or people of color.

83% of minority- and women-owned businesses identified bonding requirements as a specific barrier to the ability to obtain contracts. A number of recent studies show that minority-owned firms are significantly more likely to face difficulties in obtaining required bonds compared with majority-owned firms.

The evidence presented in the report indicates that the barriers that have impeded the growth and success of minority- and women-owned businesses continue to exist and that government contracting preference programs ameliorate the effects of public and private discrimination. For example, a 2017 disparity study prepared for the Los Angeles County Metropolitan Transportation Authority compared the participation of minority- and women-owned businesses on contracts that contained goals to encourage utilization of minority- and women-owned businesses as opposed to contracts that did not contain such goals. The results showed that on contracts without goals, minority- and women-owned firms earned only 53 cents on the dollar, but on contracts with goals, such firms earned 96 cents on the dollar—almost what would be expected given the availability of such firms in the marketplace.

The federal government currently operates two main contracting programs with race and/or sex-conscious elements: the SBA Section 8(a) business development program and the Department of Transportation Disadvantaged Business Enterprise program. All federal departments and major independent agencies participate in the SSA's Section 8(a) business development program, which offers a variety of assistance, including set-aside federal government contracts to socially and economically disadvantaged businesses. In Fiscal Year 2019, the federal government awarded \$30.4 billion to 8(a) firms.

Appendices of 219 state and local disparity studies, 45 relevant academic and government studies, and 28 Congressional hearings are included with the report. The Federal Register notice announcing the report may be found at 87 FR 4955, and the report itself is publicly available at the Department of Justice.

DONALD BORDEN

HON. DONALD NORCROSS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 14, 2022

Mr. NORCROSS. Madam Speaker, I rise today to honor educator Donald A. Borden of Blackwood, New Jersey.

Donald A. Borden began his long scholastic career teaching both special and general education, while volunteering his time coaching numerous varsity sports. Additionally, he taught for many years as an adjunct professor at Camden County College.

He went on to his first of many administrative positions when he became the Assistant Principal of Audubon High School, followed by his time as Principal of the Mansion Avenue Elementary School. Mr. Borden holds a master's degree in educational leadership from Rowan University, a bachelor's degree from Glassboro State College and has been and continues to be a strong supporter of South Jersey schools and universities.

Soon after, Mr. Borden became the Principal of Audubon Junior-Senior High School, where he worked closely with Camden County College to provide both remediation and credit-bearing course offerings to students. Mr.

Borden was promoted to superintendent of the Audubon Public School District in Camden County from 2006 to 2013, where he served as an officer of the Camden County Superintendent's Roundtable and solidified the district's financial footing while increasing diversity through the implementation of the school-choice program.

In 2015, Mr. Borden would go on to become Executive Vice President at Camden County College. On April 5, 2016, Mr. Borden was appointed as Camden County College's fifth president. During his tenure as president, Mr. Borden has served as the Chair of the New Jersey Council of County Colleges' Presidents and served as Chair of the Campus Safety Committee for the State of New Jersey's President's Council.

Today, Mr. Borden continues to uphold his commitment to the educational community by serving on committees charged with increasing dual credit opportunities for high school students. He was also selected by The Institute for Citizens and Scholars as a Fellow, representing New Jersey to explore best practices in higher education.

Madam Speaker, I ask you to join me in honoring Donald A. Borden, a resident dedicated to his community and to the advancement of educational opportunity.

HONORING THE LIFE AND SERVICE
OF JERRY YOUNG

HON. DIANA HARSHBARGER

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 14, 2022

Mrs. HARSHBARGER. Madam Speaker, I rise to recognize Mr. Jerry Young of Tennessee's 1st Congressional District. Mr. Young currently serves as President of the Tennessee College of Applied Technology in Morristown. He was named President in May 2017 and since that time, TCAT of Morristown has seen technical training opportunities expand for all residents in the college's ten county service area. The college has added dual enrollment opportunities for high school students in seven counties and completed a fourteen-million-dollar advanced manufacturing training center that will be the hub of workforce development in the region.

Before beginning his career with the Tennessee Board of Regents, he served in the U.S. Navy as an Electronics Technician for 5 years. For 3 of those years, he was deployed for overseas operations where he was awarded a Naval Expeditionary Medal, Battle Efficiency Medal, Good Conduct Medal, Marksmanship Medal and two Naval Sea Service Ribbons. After leaving the Navy, he worked as an engineer while earning his Master of Arts degree from the University of the Cumberland, a Bachelor of Science degree from

Excelsior College and an Electronics Technician from the Great Lakes (IL) Naval Training Center.

His career in technical education began in 1988 as the senior instructor in the Electronics Technology Program at the Crossville campus. He served as Vice President there from 2005 until his appointment as President in 2014. As President, he took on many initiatives to expand the school's capabilities through new program development. During his three-year tenure there, the school's enrollment increased by 30 percent, maintained an 85 percent completion rate and an 85 percent placement rate. He has been recognized as the Technical Teacher of the Year in Tennessee, Technical Teacher of the Year by the American Technical Education Associations' Gulf Coast region and nominated for national honors.

Jerry and his wife, Gail reside in the Morristown area, and they have two daughters, Jennifer Young Albertson and Dr. Emilie Young Bee as well as three grandchildren. He is an active supporter of Shriners Hospitals for Children and enjoys traveling America's rural highways on his motorcycle.

Madam Speaker, Mr. Jerry Young has been an outstanding leader and promoter of training for technical jobs and a valuable contributor to workforce development in East Tennessee, and I proudly honor him.

HONORING BISHOP'S ORCHARDS
AS THEY CELEBRATE THEIR 150-
YEAR (+1) ANNIVERSARY

HON. ROSA L. DeLAURO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 14, 2022

Ms. DELAURO. Madam Speaker, it is with great pleasure that I rise today to join the community of Guilford, Connecticut and families across state in extending my heartfelt congratulations to Bishop's Orchards, and the Bishop family, as they celebrate the 150th Anniversary of this unique community treasure. While navigating the covid pandemic may have delayed the celebration one-year, we are all excited and proud to join with them as they celebrate this very special occasion.

Connecticut has a long and proud history in agriculture and our famous fruit orchards have become a highlighted attraction for visitors. From picking your own fruits and vegetables to learning the intricacies of the perfect apple cider, our orchards offer a unique view into one of our nation's oldest industries. Today, the descendants of brothers Albert and Gene Bishop preserve this New England treasure while expanding the business to meet the needs of today's consumers. With three hundred acres lined with apple, peach, and pear trees, the Bishops continue to work hard to ensure the success of the orchards.

Generation after generation, the Bishop family have recognized the importance of preserving the natural beauty of the orchard and its surrounding properties. They were one of the first of our local farmers to initiate an integrated pest management program, significantly reducing the pesticides and chemicals used in the orchards. They have converted a parcel of their property to a solar farm, utilizing renewable energy to run the farm and its accompanying market and winery. It is through these kinds of innovations that Bishop's Orchards remains a respected leader in Connecticut's agricultural community.

Located on the shores of the Long Island Sound, Bishop Orchards captures the very spirit of New England. Owned and operated by now the 6th generation of Bishops, this remarkable family and their orchard have been fixtures of the Guilford community for more than 400 years. From the quintessential "little red barn" to the bustling market, and from the acres of orchards to the newest addition of winemaking, Bishop's Orchards is a destination for Connecticut families. It is my honor to stand today to extend my heartfelt congratulations to Bishop's on their sesquicentennial anniversary, and as we say in Italian—C'ent Anni—to another hundred.

RECOGNIZING THE ROCKRIDGE
HIGH SCHOOL SOFTBALL TEAM
ON WINNING THE IHSA 2A STATE
CHAMPIONSHIP

HON. CHERI BUSTOS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 14, 2022

Mrs. BUSTOS. Madam Speaker, I rise today to recognize the Rockridge High School Girls Softball team for their win at the Illinois High School Association (IHSA) State Championships.

The unbeaten Rockridge Rockets won 64 games before competing in IHSA State Championship game. The ladies took a chance on their winning streak and came back from a 4-0 deficit with grit and determination. The Rockridge Rockets are the first team in IHSA history to finish as undefeated State Champions in back-to-back seasons. The team never gave up and accomplished a goal they set out for themselves at the beginning of the season. As a former athlete, I commend their hard work and dedication to their team.

The Rockets athletic success is remarkable. I am incredibly proud to serve Illinois' 17th Congressional District and student-athletes. Madam Speaker, I would like to formally congratulate the Rockridge Rockets again on winning the Illinois High School Association 2A State Championships for Softball.